IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17602 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

V.J. JADEJA PRESIDENT - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :
SUO MOTU Mr V J Jadeja, party-in-person for Petitioner No(s).: 1.
Mr H L Jani, Asstt.GOVERNMENT PLEADER for Respondent No(s).: 1,2.
NOTICE SERVED for Respondent No(s).: 3,4.
MR HS MUNSHAW for Respondent No(s).: 4.
==========

CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA
Date : 24/08/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr H L Jani, learned AGP waives service of rule on behalf of

respondents no.1 and 2. Mr H S Munshaw, learned Advocate waives service of rule on behalf of respondent No.4. With the consent of all concerned, the matter is taken up for final hearing today itself.

2. The present petitioner, Mr V J Jadeja is the President of National Association for Blinds, situated at Ghanshyam Nagar, Bhuj. He addressed a letter to Hon'ble The Chief Justice of this Court dated 1.12.2003 wherein he has stated that there are 10 blind Teachers who are required to be given appointment in different schools as music teachers since 1% of the seats is reserved for blind pesons. It is his say that he had brought this fact to the notice of the Commissioner Court disabilities at Gandhinagar and also to the Director, Primary Education but till now nothing has been done. On receipt of this letter, Hon'ble The Chief Justice directed the Registry of this Court to treat the letter as public interest litigation and to place it before the Court taking up such business. That is how the matter has now come before us.

3. Heard Mr Jadeja, who appeared as party-in-person. According to his submission, 1% of the seats must be reserved for blind as per the Indian Constitution and in his opinion now there are 11 candidates who are blind persons and are covered under the 'handicapped' category are qualified to be appointed as music teachers in Kachchh district.

3.1. Pursuant to the notice issued by this Court, respondent no.4, has

remained present before this court through his Advocate Mr H S Munshaw and has filed affidavit-in-reply. Respondent No.3 though served, has not remained present.

4. Mr H L Jani, learned AGP has appeared for respondents no.1 and 2. Mr M A Patel, Dy.Director of Primary Education has filed affidavit-in-reply on behalf of respondent no.2. An additional affidavit has also been filed on behalf of respondent no.2 by Dr. P N Dave, Dy.Director, Primary Education, Gandhinagar. Today he is personally present in the Court. On behalf of respondent no.4, Mr B M Pandya, District Primary Education Officer, Kachchh District Panchayat, Bhuj has filed affidavit -in-reply. It is the say of the respondents that there is reservation of 3% for handicapped persons for the appointment to post of music teachers in the Primary Schools in the State. It is further stated thatout of it, 1% post is reserved for physically challenged, 1% for mentally challenged and 1% is reserved for blind persons. In the affidavit of Dr P N Dave, details with regard to the vacancies in Kachchh district, Bhuj and other districts are mentioned.

5. It is stated by Mr Munshaw that in view of the fact that there are 45 posts of music teachers which have been advertised for fresh appointment, so far as the category of blind teachers is concerned, only one post would be available. However, according to him, 5 candidates of the

petitioner have already been selected on merits in general category. But the remaining 6 have not been selected since there are other blind candidates having more merits are available. In view of this statement, it becomes clear that so far as the following 5 out of 11 candidates of the petitioner are concerned, they can be safely appointed as music teachers in Kachchh district itself.

i. Khataria Hirabhai Manabhai

ii. Sama Irfan Haroon

iii. Gadhvi Devang Arjan

iv. Luhar Mahmad Ibrahim

v. Umraben Naran Harijan

Mr Munshaw states that after proper verification of the certificates and their credentials, they will be given posting in Kachchh district. He, further states that to complete this process, it will take about 3 to 4 weeks. This petition has been filed in the year 2003. Since then the candidates of the petitioner are striving to get employment. Now the things have crystalised. We, therefore, direct that all the formalities which are required to be completed before appointment shall be completed by the respondents, in particular by respondents no.3 and 4 and grant appointment to those aforesaid five candidates on or before 18.9.2005.

6. So far as the remaining six candidates of the petitioner are concerned, there is a scope to accommodate them in the vacancies in other districts. The statement annexed to the affidavit of Dr. Dave shows that there are 11 posts of music teachers in the district of Rajkot, 7 posts in Jamnagar, 18 posts in Banaskantha and 9 posts in Surendranagar districts to be filled in. Mr H L Jani, on instructions from Mr Dave states that applications of these six candidates will be called for from the office of the District Primary Education Officer, Kachchh by the Dy. Director, Dr Dave who will send necessary intimation to the said office and he will direct the said office with necessary instructions as to the application and relevant documents of which candidate should be forwarded to which district. Mr Munshaw states that as and when such intimation is received, office of respondent no.4 shall forward applications of the candidates in accordance with the instructions received from Mr Dave along with necessary certificates and other documents. It is further stated that as and when the applications are received by the respective districts, merits of the candidates will be scrutinised and if they are found proper and eligible, they will be granted appointment in the respective districts. In view of the aforesaid statements, we direct that the process of sending intimation and calling of these 6 candidates (whose names are given hereunder) and forwarding of the applications together with relevant

documents by respondent no. 4 shall be completed on or before 24.9.2005.

(i) Limani Vinod Meghaji

(ii) Alimamad I Luhar

(iii) Champaben D Lakha

(iv) Bhatt Neha R

(v) Jadeja Kalyan Devraj

(vi) Huban Samji Rava

After receipt of these applications from respondent no.4 by the respective districts, process of selection and if the candidates are selected , granting of appointment shall also be completed on or before 24.10.2005. Respondent no.2 is directed that decision of either selection or rejection shall be intimated to the concerned candidates well in time. In the event of rejection, reasons in brief for the decision shall also be intimated to the concerned candidate.

7. With these observations, this petition is partly allowed. Rule is made absolute to the aforesaid extent..

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp